REMARKS

Favorable reconsideration of this application, in light of the preceding amendments and following remarks, is respectfully requested.

Claims 1-32 are pending in this application.

Rejections under 35 U.S.C. § 102

i. Claims 1-4, 22, 26 and 27

Claims 1-4, 22, 26 and 27 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Waldin et al. (U.S. Patent 6,052,531). Applicants respectfully traverse this rejection for the reasons detailed below.

Waldin does not disclose, at least, "a hybrid form of the original software, formed in such a way that at least one part of the source text is compiled" as set forth in independent claim 1. As was argued in the Response of January 18, 2011, Waldin discloses a binary patch file builder, which produces binary patch files. In the Response to the Arguments, the Examiner maintains his arguments that the DeltaCatalog can be equated to hybrid form of the original software. However, Waldin, at column 6 lines 48-67, shows that a DeltaCatalog is implemented with XML. This can further be seen in FIG. 6 of Waldin. Therefore, the Examiner is incorrect in stating that the DeltaCatalog contains both binary source code and XML code. For at least these reasons, Waldin cannot disclose at least "a hybrid form on the original software, formed in such a way that at least one part in the source text is compiled into at least one of a byte binary code in at least one further part of the source text is converted into a code formulated in a meta markup language."

In addition, this can be seen in FIG. 3 of Waldin and further in column 5 lines 26-35, Waldin is directed at only update patches. New claims 30-32 have been added

in the present application to discuss some examples of different varieties of variation points that may be implemented.

In addition, as argued in the previous Response of January 18, 2011, nothing in Waldin teaches the DeltaCatalog being converted into XML from the source text. It is noted that this feature is required in the limitation "code formulated in a meta markup language" as set forth in independent claim 1.

For at least these reasons, Applicants respectfully submit that Waldin fails to teach or render obvious each element of independent claim 1 and any claims depending from claim 1. In addition, Applicants respectfully submit that, while claim 22 should be interpreted based solely on the limitations set forth therein, claim 22 includes limitations similar to those discussed above with reference to independent claim 1. Accordingly, for at least reasons somewhat similar to those discussed above with respect to claim 1, Applicants respectfully submit that Waldin fails to teach each of the arguments of claim 22 or any of the claims depending from claim 22.

ii. *Claims 6, 7 and 23*

Claims 6, 7 and 23 stand rejected under 35 U.S.C. § 102(b) as being anticipated over Germon ("Using XML as an Intermediate Form for Compiler Development," XML conference and Exposition, 2001). Applicants respectfully traverse this rejection for the reasons detailed below.

Claim 6 recites, *inter alia*, "making a first code formulated in a meta markup language with language extensions," and "converting the source code...into a second code formulated in the meta markup language without the language extensions." Applicants continue to disagree with the Examiner that Germon discloses these limitations of independent claim 6.

The last paragraph on page 5 of Germon discusses generating a template file in one pass and resolving the placeholder explicitly in the second pass. It appears that the second pass, if anything, corresponds to a non XML source code. There is no indication in Germon that there are two XML versions created. The backpatching disclosed in Germon appears to write placeholders into the output, which, even if placeholders can be read as language extensions, still results in a creation of a source ·code file, not an XML file.

For at least these reasons, Applicants respectfully submit that Germon fails to teach or render obvious independent claim 6 or any claims depending from claim 6. Further, while claim 23 should be interpreted solely in light of the limitations set forth therein, claim 23 nevertheless includes limitations similar to those discussed above with respect to claim 6. Therefore, for at least the reasons discussed above with respect to claim 6, Applicants respectfully submit that Germon fails to teach each of the limitations of claim 23. Therefore, Applicants respectfully request that the rejections of claim 6, 7 and 23 be withdrawn.

Rejections under 35 U.S.C. § 103

i Claim 5

Claim 5 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Waldin (U.S. Patent 6,052,531) in view of Tan et al. (U.S. Patent 7,536,686). Applicants respectfully traverse this rejection for the reasons detailed below.

Even assuming *arguendo* that Tan could be combined with Waldin (which Applicants do not admit), the combination of references fails to render even independent claim 1 obvious because Tan suffers from at least the same deficiencies as Waldin with respect to independent claim 1.

From even a cursory review of Tan, Tan does not disclose the limitations of claim 1. Instead, Tan merely discloses automatically installing applications onto a computer, rather than the use of the XML file format to generate patches or customized software based on user requirements. Therefore, even in combination, Waldin in view of Tan fails to render claim 5 obvious because claim 5 depends from claim 1. Withdrawal of this rejection is requested.

ii. Claims 8-10, 12-17, 19-21, 24, 25, 28 and 29

Claims 8-10, 12-17, 19-21, 24, 25, 28 and 29 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Waldin (U.S. Patent 6,052,531) in view of Germon ("Using XML as an Intermediate Form for Compiler Development," XML conference and Exposition, 2001). Applicants respectfully traverse this rejection for the reasons detailed below.

Claim 8 recites *inter alia*, "converting a source code formulated in a first program language, into a first code formulated in a meta markup language." In the Response to the Arguments, the Examiner still did not explain how Waldin teaches the converting limitation of the present application. The Examiner again references column 4, line 17-35 and column 6, lines 48 through column 7, line 25 of Waldin as disclosing this limitation. The Examiner repeats his arguments that Waldin discloses creating DeltaPackages that allow software to be updated from one version to another. However, this still does not explain how the limitation "converting a source code formulated in a first programming language into a first code formulated in a meta markup language" is disclosed by Waldin.

As argued in the Response of January 18, 2011, nothing in Waldin teaches converting any type of source code into the DataCatalog of Waldin. Accordingly, the Examiner does not identify which sections of Waldin or Germon, alone or in

combination, teach or render obvious "converting a source code, formulated in a first program language, into a first code formulated in a meta markup language" as set forth in claim 8.

In addition, while claim 24 should be interpreted solely in light of the limitations set forth therein, Applicants respectfully submit that claim 24 includes limitations similar to those discussed above with respect to claim 8. Therefore, for at least the reasons discussed above with respect to claim 8, Applicants respectfully submit that a *prima facie* case obviousness has not been established with respect to claim 24. Dependent claims are patentable for the reasons stated above with respect to the independent claims at least by virtue of their dependency from independent claims 8 or 24.

iii. Claims 11 and 18

Claims 11 and 18 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Waldin (U.S. Patent 6,052,531) and Germon ("Using XML as an Intermediate Form for Compiler Development," XML conference and Exposition, 2001), in view of Tan (U.S. Patent 7,536,686). Applicants respectfully traverse this rejection for the reasons detailed below.

Claims 11 and 18, dependent from independent claims 8 and 13 respectively, are patentable for the reasons stated above with respect to claims 8 and 13 as well as for their own merits. Accordingly, Applicants respectfully requests the reconsideration and withdrawal of the rejection to claims 11 and 18.

CONCLUSION

In view of the above remarks and amendments, the Applicants respectfully submit that each of the pending objections and rejections has been addressed and overcome, placing the present application in condition for allowance. A notice to that effect is respectfully requested. If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned.

Should there be any outstanding matters that need to be resolved in the present application, the Examiner is respectfully requested to contact the telephone number of the undersigned below.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. § 1.16 or under 37 C.F.R. § 1.17; particularly, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY, & PIERCE, P.L.C.

By   _____

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